

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

2010 JUN 11 PM 3:07

DEPUTY CLERK *pl*

RICHARD LEON GOYETTE

v.

UNITED STATES OF AMERICA

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2:10-CV-37

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DENYING MOTION TO DISMISS**

Before the Court is the Motion to Dismiss, filed by the government on March 19, 2010. At the time the government filed its Motion to Dismiss, defendant's direct appeal was pending with the Fifth Circuit. The government argued defendant's Motion to Vacate under 28 U.S.C. § 2255 was premature in light of the pending direct appeal.

The Fifth Circuit has since dismissed the direct appeal. After the dismissal, the United States Magistrate Judge issued a Report and Recommendation, on May 20, 2010, to deny the Motion to Dismiss. The government has not filed objections to the Report and Recommendation.

Accordingly, the Magistrate Judge's Report and Recommendation is ADOPTED, and the government's March 19, 2010 Motion to Dismiss is DENIED.

IT IS SO ORDERED.

ENTERED this 11th day of June 2010.

Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE